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JOHN F. DAVIS, CL

NO. 22, ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1965

STATE OF SOUTH CAROLINA

Plaintiff

v.

NICHOLAS deB. KATZENBACH,
Attorney General of
the United States,

Defendant

MOTION BY STATE OF ALABAMA FOR LEAVE TO INTERVENE

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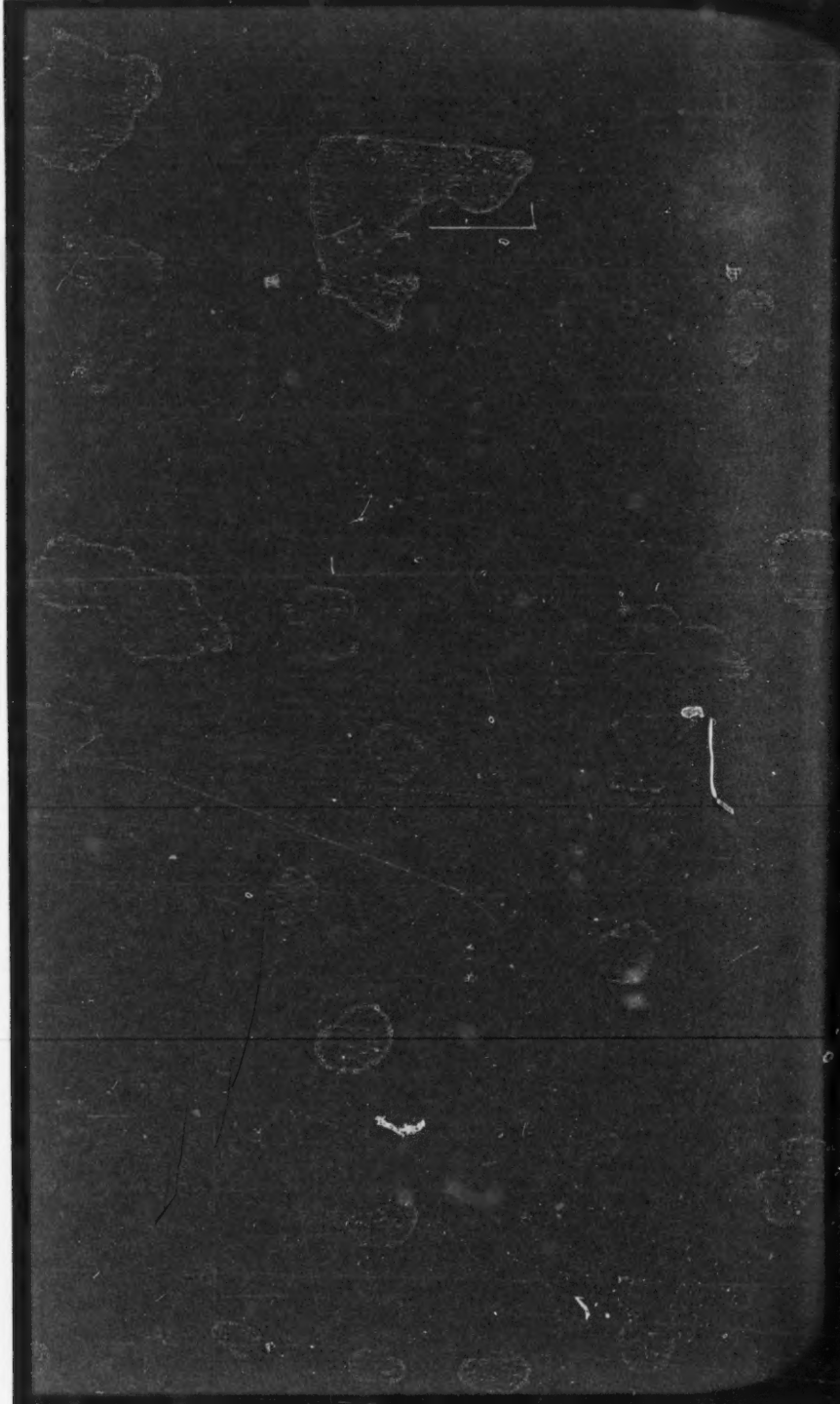

NO. 22, ORIGINAL

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STATE OF SOUTH CAROLINA,

Plaintiff

versus

NICHOLAS deB. KATZENBACH,
Attorney General of
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MOTION BY STATE OF ALABAMA FOR LEAVE TO INTERVENE AS A PARTY PLAINTIFF.

Comes the State of Alabama, acting by and through its Governor who as the Chief Executive Officer of said State is authorized to bring suit in the name of the State, and who is charged with the responsibility and duty of maintaining the authority and jurisdiction of the State of Alabama and of seeing that its laws are faithfully executed, and moves for leave to intervene in this cause, and as such intervener to be aligned as a party plaintiff in this cause to the end that the State of Alabama may adequately and properly present to this Court its claims that the Voting Rights Act of 1965 (PL 89-110) is unconstitutional as written and as applied to the State of Alabama and its citizens; for, although this applicant's position, vis-a-vis said Voting Rights Act, presents some questions of law in common with those asserted by the plaintiff in the original action, nonetheless the factual situations in South Carolina and Alabama are greatly different

and because of such difference the representation of Alabama's interests by South Carolina may be inadequate and result in findings, rulings or decisions that are binding upon yet adverse to the rights of Alabama and its citizens. Submitted herewith are proposed articles or claims upon which intervention is sought.

FRANCIS J. MIZELL, JR.
REID B. BARNES

Attorneys and Special Counsel for the State of Alabama acting by and through its Chief Executive Officer, Hon. George C. Wallace, as Governor of Alabama.

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Attorney General of the United States,

Defendant.

ARTICLES AND CLAIMS OF INTERVENTION BY THE STATE OF ALABAMA

ARTICLE ONE

Intervener, as a Sovereign State, admits all the allegations contained in the complaint of South Carolina, the original plaintiff in this cause, and joins in the prayer of said complaint. It further joins in and adopts the brief of the plaintiff insofar as it relates to the constitutionality of the Voting Rights Act as written.

ARTICLE TWO

Because the State of Alabama is apprehensive that the main action in which it seeks to intervene is so limited and restricted in scope and factual context that an adjudication thereof would be inapposite, detrimental or adverse to the interests and rights of Alabama and its citizens, it is desirous

of an opportunity to present within the framework of this litigation contentions and claims in addition to those asserted by the State of South Carolina, as the original plaintiff herein.

ARTICLE THREE

The claims, contentions and issues urged by the State of Alabama for consideration and decision to those presented by South Carolina's original complaint herein are:

A. Does the Voting Rights Act of 1965 apply to Alabama?

B. Can Congress constitutionally suspend, supersede, or annul Alabama's constitutional requirement that a voter must be able to read and write an article of the Constitution in the English language?

C. Considering the fact that the total number of persons over the age of 21 years residing in Alabama was 1,834,378 according to the last (1960) United States census, and that approximately 200,000 of these were armed forces personnel and their adult dependents arising from assignments to armed forces installations in Alabama, viz: Redstone Arsenal at Huntsville, Gadsden Chemical Depot, Fort McClellan, Gunter AFB, Maxwell AFB, Craig AFB, 4th Corps Headquarters at Birmingham, Fort Rucker, and Brookley AFB (none of whom could acquire residence for voting in Alabama—see 17 Ala. Code 17—even though included as residents by the United States census); that as of November 1, 1964, 3,753 persons over 21 were serving felony sentences in Alabama penitentiaries, and were disqualified from registering; that the State Insane Asylum system had 6,942 persons committed therein over the age of 21 years as of November 1, 1964; and that 278,054 persons over 21 years of age in 1964 were illiterate, having less than a fourth grade education;

and that the total number of these persons disqualified and ineligible to vote for reasons totally unrelated to either race or color amounted to 488,749 thus leaving only 1,345,629 persons eligible to register and vote in Alabama, of whom some 688,147 or 51% voted in the presidential election of 1964, can it then be reasonably or truthfully said more than 50% of the elegible to vote population were denied the right to so do by reason of their race or color? It is clear the application of the Voting Rights Act to Alabama, was not brought about by discrimination.

D. The Director of the Bureau of Census, the Civil Service Commission and the Attorney General of the United States are abusing, misunderstanding and misapplying the laws of Alabama; or else are deliberately ignoring and violating the requirements of the Voting Rights Act; and, hence the Act is unconstitutional as applied by the agencies of the Government.

E. The Act was deliberately drawn to select certain States to come under it and to exclude other States.

F. The Act does not apply equally to the States of the United States especially with respect to the statutory formula used to invoke the provisions of the Act against Alabama.

G. The Act denies to the State of Alabama the right to subpoena and provide witnesses as a matter of right in that it requires said State to go to the District of Columbia, a distance of some 700 miles or more in order to have access to judicial relief.

H. The Act is not applicable to all States alike, as those States requiring literacy as a voter qualification on November 3, 1964, were required by the Act to vote a higher percentage of its residents in that election than those not requiring literacy.

I. The Act violates and conflicts with Articles 3 and 4 and the 5th Amendment of the United States in that it purports to delegate to and vest certain administrative offices authority to make rules and regulations, and the power to determine arbitrarily the applicability of the Act to Alabama without judicial review.

ARTICLE FOUR

In the State of Alabama the case of Bernard Reynolds, as Judge of Probate v. Nicholas Katzenbach, as Attorney General of the United States is pending before a three judge District Court in the Southern District of Alabama; the case of United States v. State of Alabama is pending before a three judge court in the Middle District of Alabama; and the case of the United States v. State of Alabama and Registrars of Macon County, Alabama is pending in the District Court in the Middle District of Alabama; and, in all of said cases the United States or its Attorney General has asked for affirmative action against the adverse parties therein pursuant to rights and penalties created by the Act, and hence said Act is due to be litigated and constitutionally questioned, not only as the same is written but especially as applied to the various factual situations in Alabama. Each of these cases provide areas for constitutional interpretations and determinations of the Act; and, in order that the full scope, effect and validity of the Act may be fully and properly considered, as well as ultimately determined by this Court, Alabama should be allowed to intervene as herein moved. It is respectfully suggested further action should be stayed in this case and Court until there has been an orderly and adequate consideration by the lower courts of the validity of the Act as written and now being applied by the Attorney General of the United States in Alabama; or in lieu thereof that a Special Master or Master be appointed to hear and report to this Court the

factual issues relevant to the application, enforcement and validity of the Act in Alabama, prior to an adjudication of the constitutionality vel non of the Act.

ARTICLE FIVE

By passage of the Act the United States Congress exercised powers not delegated to it, and which exercise of non-delegated power infringes upon rights reserved to the State; and to the people.

ARTICLE SIX

The Act as applied by the defendant is unconstitutional. Defendant is using said Act in an arbitrary and dictatorial manner by suspending and abrogating or failing to comply with State laws not inconsistent with the Act.

ARTICLE SEVEN

The defendant, as Attorney General of the United States, acting under the color of the Act has illegally and arbitrarily appointed Examiners in various counties in Alabama where: (1) Suits instituted by the said Attorney General to enforce the guarantees of the 15th Amendment were pending and court appointed referees were functioning without obtaining from the court concerned authorization for his appointment of said examiners; and (2) there had been no judicial finding of any past patterns of discrimination, and where the law of Alabama was then and is now being applied without any discrimination as to race or color.

ARTICLE EIGHT

Movant further urges as reasons for the granting of this motion to intervene the propositions asserted by the undersigned Special Counsel in their brief amicus curiae filed contemporaneously herewith, or which will be filed shortly hereafter.

For the reasons above noted, it is prayed this motion to intervene be granted and allowed and that a final hearing

or determination of this case be delayed, as hereinabove suggested, until there has been an adequate and orderly disposition of legal and factual issues pending in the various Federal Courts in Alabama where affirmative action is now pending at the request of the Government.

RESPECTFULLY SUBMITTED,

FRANCIS J. MIZELL, JR.
REID B. BARNES
Attorneys and Special Counsel for the State of Alabama acting by and through its Chief Executive Officer, Hon. George C. Wallace, as Governor of Alabama.

CERTIFICATE

I, Francis J. Mizell, Jr., one of the Special Counsel for the State of Alabama and duly qualified and admitted to practice in the Supreme Court of the United States, hereby certify that I have on this the ..... day of December, 1965, served a copy of the foregoing motion for leave to intervene upon Honorables Nicholas deB. Katzenbach, Attorney General; Thurgood Marshall, Solicitor General; and John Doar, Assistant Attorney General, all Attorneys for the defendant, Department of Justice, Washington, D. C., 20530; and also upon Honorables Daniel R. McLeod, Attorney General of South Carolina, Wade Hampton Building, Columbia, South Carolina; David W. Robinson and David W. Robinson, II, Special Counsel for South Carolina, P. O. Box 1942, Columbia, South Carolina, Attorneys for the plaintiff; and to Honorables Richmond M. Flowers and Gordon Madison, Attorney General and Assistant Attorney General, respectively, of the State of Alabama, Montgomery, Alabama, by mailing each of them a copy, postage prepaid, to their aforesaid addresses.

FRANCIS J. MIZELL, JR.
Of Counsel